

NOT FOR PUBLICATION

**UNITED STATE DISTRICT COURT
DISTRICT OF NEW JERSEY**

Maria Jose Carrascosa,	:	
Petitioner	:	
	:	Civil Action No. 07-0355 (DRD)
v.	:	
	:	<u>OPINION</u>
Leo P. McGuire, Sheriff, Bergen County,	:	
New Jersey,	:	
Respondent.	:	

Appearances by:

Mark S. Carter, Esq.
79 Main Street
Hackensack, NJ 07601

Alan S. Lewis, Esq.
Kenneth S. Levine, Esq.
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005

Attorneys for the Petitioner, Maria Jose Carrascosa.

Danielle Pasquale, Esq.
County of Bergen
Hackensack, NJ 07601

Attorney for the Respondent, Leo P. McGuire, Sheriff, Bergen County

Peter Van Aulen, Esq.
Law Offices of Peter Van Aulen
50 Market Street
Saddle Brook, NJ 07663

Attorney for Intervenor, Peter W. Innes

Annmarie Cozzi, Esq.
Assistant Prosecutor
Office of the Bergen County Prosecutor
Hackensack, NJ 07601

Attorney for the Intervenor, Bergen County Prosecutor

DEBEVOISE, United States Senior District Judge

The matter came before the District Court on the Petition of Maria Jose Carrascosa (“Carrascosa”) for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254(b)(1), through which she sought to end and enjoin her detention in the Bergen County, New Jersey jail by Sheriff Leo P. McGuire, where she has been held since November 21, 2006 for her failure to abide by orders of the New Jersey Superior Court. Carrascosa alleged that she is being detained in violation of treaty obligations of the United States under the Hague Convention, and the United States’ statutes interpreting the treaty. The District Court having considered the submissions of the parties, and for the reasons set forth in its Opinion of February 8, 2007, denied Carrascosa’s petition and issued an order, also dated February 8, 2007, implementing its opinion.

Thereafter, Carrascosa moved for reconsideration before the District Court and, also, appealed to the Third Circuit. The Court of Appeals stayed Carrascosa’s appeal and remanded it to the District Court, because the District Court, pursuant to L.A.R. 22.2, Rule 22 of the F.R.A.P., and 28 U.S.C. § 2253, failed to issue a certificate of appealability or to state the reasons why a certificate of appealability should not issue. Further, the Court of Appeals stayed Carrascosa’s appeal pending the District Court’s disposition of her motion for reconsideration.

A certificate of appealability may issue only upon a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). If a “district court has rejected the constitutional

claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Because Carrascosa alleges that she is being detained in violation of treaty obligations of the United States under the Hague Convention, and the United States' statutes interpreting the treaty, and because reasonable jurists may find the district court's assessment of her constitutional claim debatable, a certificate of appealability will be issued. An appropriate Order is attached.

/s/ Dickinson R. Debevoise

Dickinson R. Debevoise, U.S.S.D.J.

Dated: March 27, 2007